THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on : 22.03.2007
Judgment Delivered on : 17.04.2007

\+ **BAIL APPLN 4426/2006**

VISHAL SHARMA ...Petitioner

- versus -

SHRI DEEPAK KUMAR MANGOTRA ...Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Harjinder Singh, Sr. Advocate with Mr Yogesh K. Saxena, Ms Seema Juneja and Ms Shikha Tyagi.

For the Respondent : Mr Satish Aggarwal.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. This is a bail application moved on behalf of the accused Vishal Sharma. The case for the prosecution is that on 09.09.2003, on the basis of intelligence received by the Department of Revenue Intelligence, one Maruti Zen Car bearing registration No. DL-6CB-6980 was intercepted near the crossing of Shyam Garments, Central Market, Lajpat Nagar, New Delhi at about 10.30 am. There were four persons in the car and they were Gurmeet Singh, who was allegedly the driver, Purshottam Lal,

Vishal Sharma and Som Nath Sharma, who were alleged to be the owners of the car. As per the prosecution, since the place was not proper for carrying out of the search, the vehicle as well as the four persons were taken to the DRI office at I.P. Estate. Two *panch* witnesses namely, Manwar Singh and Satte Singh were called. It is alleged that on the search of the vehicle, 4.225 kg of contraband was recovered. The CRCL report of the sample taken indicated that the substance had a content of 89% of Diacetylmorphine . In other words, the alleged recovery was of a commercial quantity of high grade heroin.

2. Mr Harjinder Singh, the learned senior counsel appearing on behalf of the petitioner, submitted that the *panch* witnesses Manwar Singh and Satte Singh were stock witnesses and their evidence with regard to the recovery cannot be relied upon. He also submitted that the co-accused Gurmeet Singh, who was allegedly driving the vehicle, has been granted bail by virtue of the order of Special Judge dated 29.08.2006. He submits that the learned Special Judge, while granting bail to co-accused (Gurmeet Singh) took note of the decision of this court in the case of ***Kashmir Singh v Narcotics Control Bureau*** *:* ***2006 (3) JCC Narcotics 139*** wherein the entire issue of stock witnesses was considered. Reference was also made to the order of the High Court dated 31.7.2006 in the very case of Gurmeet Singh whereby the matter was remanded to the Special Judge for reconsideration. The order of the High Court, passed on 31.7.2006, noted two other cases, namely, ***DRI v Vinod Kumar*** and ***DRI v Brian Taylor & Others*** wherein Manwar Singh and Satte Singh were witnesses in the former case and Manwar Singh alone was the witness in the latter case. It was, therefore,

attempted to be shown by Mr Harjinder Singh that the present recovery witnesses, namely, Manwar Singh and Satte Singh were stock witnesses who were used time and again by the DRI for the purposes of showing recoveries. He submitted that this created a taint on the recovery itself and, therefore, the petitioner ought to be given benefit thereof. The learned counsel for the petitioner also pleaded for parity with the case of Gurmeet Singh.

3. Mr Aggarwal, who appears on behalf of the DRI submitted that there was no question of treating the present petitioner's case at par with that of Gurmeet Singh. He submitted that the statements recorded under Section 67 of the NDPS Act were entirely different. He submits that Gurmeet Singh was merely a driver. On the other hand the present petitioner has indicated his involvement as a smuggler and dealing in narcotic substances even prior to the alleged incident. He referred to the statement of the petitioner recorded under Section 67 of the NDPS Act which indicates the entire sequence of events which ultimately led to the interception of the vehicle. It was indicated that on 08.09.2003 one Devi Singh contacted the petitioner at his chemist shop and informed that he had a consignment of about 4.2 kg of heroin which had to be delivered at Delhi on 09.09.2003 and that he had asked the petitioner to arrange for the delivery. The sequence of events relating to the departure of the vehicle from Jammu and its arrival at Delhi and the other persons involved in the said transaction are indicated in the said statement. It is also indicated that all the four co-accused stayed in the same guest house located at Central Market, Lajpat Nagar, New Delhi and after having breakfast all the four sat in the car and were about to start for Connaught Place

when they were intercepted by some persons who identified themselves as officers of the DRI. Thereafter, they were asked to accompany them to the office of the DRI located at I.P. Estate. Mr Aggarwal pointed out that in the said statement, the previous involvement and history of the petitioner was also given whereas in the statement of Gurmeet Singh, the situation was different as recorded in the order passed by the learned Special Judge itself. Therefore, he submitted that there was no question of any parity between the case of the present accused and that of Gurmeet Singh. He further submitted that charges have been framed and the trial is in progress. He also emphasized that this was a case under the NDPS Act and involved a commercial quantity of Heroin and, therefore, the rigours of Section 37 of the said Act would be applicable. He also submitted that a confessional statement made under Section 67 of the NDPS Act was admissible and could not be brushed aside lightly. He further submitted that Manwar Singh and Satte Singh were not stock witnesses although they happened to have been recovery witnesses in other cases of the DRI also.

4. In rejoinder, Mr Harjinder Singh drew my attention to the statement of PW6 (S.K. Sharma) recorded in the course of the trial. He drew my attention, in particular, to the cross examination conducted by him of the said witness which indicated that the statements allegedly made by the accused in his confessional statement were not verified by the said witness. The cross examination also reveals that the said PW6 did not tell the accused Vishal Sharma that he is not bound to give a statement although he informed him that the statement made by him could be used against him. The cross examination also reveals that PW6 did not tell the accused that

he had a right to call his advocate before recording the evidence. It is the submission of Mr Harjinder Singh that these circumstances make the confessional statement very doubtful. He also relied upon the recent judgment of the Supreme Court in the case of ***Francis Stanly @ Stalin v Intelligence Officer, Narcotic Control Bureau : 2007 I AD (S.C.) I*** wherein the Supreme Court observed as under:

> "15. We are of the opinion that while it is true that a confession made before an officer of the Department of Revenue Intelligence under the NDPS Act may not be hit by Section 25 in view of the aforesaid decisions, yet such a confession must be subject to closer scrutiny than a confession made to private citizens or officials who do not have investigating powers under Act. Hence the alleged confession made by the same appellant must be subjected to closer scrutiny than would otherwise be required."

Mr Harjinder Singh further submits that the petitioner's previous alleged involvement mentioned in the confessional statement cannot be used against the accused in view of Section 54 of the Evidence Act which reads as under;-

> "54. Previous bad character not relevant, except in reply. - In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant."

5. Having given my thoughtful consideration to the arguments advanced by the counsel for the parties, I am not inclined to allow this application for bail. While it is true that use of stock witnesses should be deprecated, it is also true that other evidence could be relied upon by the prosecution to bring home the guilt of the accused. The petitioner's case is also different from that of co-accused Gurmeet Singh, as indicated in the order of the learned Special Judge dated 29.8.2006 and as submitted

by Mr Satish Aggarwal. Therefore, the petitioner cannot claim parity with co-accused Gurmeet Singh and on that basis claim to be released on bail. As regards the cross-examination of PW6 (S.K. Sharma) that is a matter of trial. So also is the question of consideration of the arguments based on Section 54 of the Evidence Act mentioned above. At this stage, I find that there is an alleged recovery of a substantial amount (4.225 Kg.) of high grade heroin. Clearly, the rigours of Section 37 of the NDPS Act would come into play. Having considered the facts and circumstances of the case, I am unable to persuade myself, at this stage, that there are reasonable grounds for believing that the petitioner is not guilty of the offence. That being the case, the limitations prescribed for the grant of bail under Section 37 of the NDPS Act are not satisfied and, therefore, the petitioner would not be entitled to bail at this stage.

6. The bail application is dismissed.

7. It is made clear that nothing expressed or stated in this order shall affect the trial.

BADAR DURREZ AHMED
(JUDGE)

April 17, 2007
M&J